IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 19.06.2007

Coram

The Honourable Mr. Justice DHARMA RAO ELIPE

and

The Honourable Mr. Justice S. PALANIVELU

W.P. No.32382 of 2002

S. Singamani ... Petitioner

..Vs..

1. The District Collector,
   Tuticorin District,
   Tuticorin.

2. The Superintendent of Police,
   Tuticorin District, Tuticorin.

3. The Commissioner,
   Tuticorin Municipality, Tuticorin.

4. The Chairman,
   Municipal council,
   Tuticorin Municipality,
   Tuticorin.

5. New Bus Stand Area United
   Merchants Association (Regd.),
   rep. by its Secretary,
   M. Rajendran ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of `certiorarified mandamus.

WEB COPY

For Petitioner : Mr. K. Rajkumar
For Respondents : Mr. K. Balakrishnan,
Addl. Govt. Pleader
for R1 and R2
Ms. G. Devi for R3
Mr. K.S. Arul for R5

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was made by DHARMA RAO ELIPE, J.)

This writ petition has been filed by the petitioner, who is the successful bidder of cloak room bearing Door No.52-A, Tuticorin New bus stand, seeking to issue a writ of certiorarified mandamus, to call for the records relating to the resolution Nos.46 and 47 dated 29.7.2002 passed by the Municipal Council, the fourth respondent herein and quash the same and direct the third respondent herein to give effect to the earlier resolution No.1591 dated 30.3.2002 passed by the Council, by granting formal orders of renewal and fixation of enhanced rent in accordance with the Government orders in force.

2. The case of the petitioner is that there are two bus stands in the Tuticorin town. The old bus stand is situated in the heart of the town and the new bus stand is situated on the outskirts of Tuticorin Town. After construction of new bus stand, certain shops and cloak rooms have also been constructed in the new bus stand, to meet the requirements of the travelling public. The shops and cloak rooms were brought for public auction during the year 1998. The petitioner was the successful bidder for the cloak room bearing Door No.52-A, Tuticorin New Bus Stand. Since the cloak room has not attracted many travelling public, the petitioner sustained huge loss.

3. The further case of the petitioner is that there exists another cloak room in the same bus stand, which itself meets the public needs and women waiting room also stands for the women passengers. Since the petitioner sustained huge loss in conducting the business of cloak room as per the licence, for conversion of cloak room into shop, the petitioner approached this Court by way of filing W.P.No.13498 of 1999 and this Court, by an order dated 9.8.1999, directed the respondents to consider the claim of the petitioner to convert the cloak room into a shop. Accordingly, by proceedings dated 22.11.1999, the third respondent issued orders of conversion of cloak room allotted to the petitioner into a shop. The said order has been passed, pursuant to the resolution passed by the Municipal Council on 29.10.1999 vide Resolution No.741. The original lease granted by the third respondent expired on 20.7.2001.

4. The further case of the petitioner is that during the pendency of earlier lease, the third respondent, by his order dated 30.3.2001, offered the petitioner renewal of lease from 20.7.2001 to 20.7.2004. The petitioner accepted the said offer by letter dated 3.4.2001 and undertook to pay the enhanced rent. But, by order dated 20.8.2001, the third respondent rejected the claim of the petitioner for renewal of lease, contrary to the offer made by the respondents to the petitioner herein. Hence the petitioner filed W.P.No.17330 of 2001 before

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

this Court to quash the proceedings dated 20.8.2001. The said writ petition was disposed of, holding that the petitioner is entitled to get the lease renewed for the purpose of utilisation of the premises bearing door No.52-A as a cloak room renewed by the respondent.

5. The further case of the petitioner is that aggrieved over the order passed by the learned single Judge, the petitioner filed W.A. No.2708 of 2001. By an order dated 4.12.2001, the First Bench of this court held that the petitioner's plea for renewal of lease offered by the third respondent has to be placed before the council and to act according to the ultimate decision of the council and the third respondent was directed not to take any further action to evict the petitioner from the premises in question till then. By resolution No.1591 dated 30.1.2002, the council has resolved to the effect that the entire cloak room may be given to the petitioner by way of renewal of lease for running it as a shop because the conversion has already taken effect and has become final, but the resolution was not given effect to. Hence he filed W.P.No.6067 of 2002 and by an order dated 27.2.2002, this Court directed the third respondent to consider the petitioner's representation to give effect to the resolution dated 30.1.2002, but the third respondent did not have any inclination to implement the orders passed by this Court.

6. The further case of the petitioner is that he issued a contempt notice to the third respondent on 2.4.2002 since the third respondent did not comply with the order passed by this court. Immediately, the third respondent, with a view to nullify the various orders passed by this Court, sought a different legal opinion and sought to evict the petitioner from the existing premises. Thereafter, the third respondent instigated the members of the council to pass a resolution to cancel the earlier resolution passed by the council and accordingly, resolution was passed on 30.1.2002 in No.1591 without giving any opportunity or notice to the petitioner herein. Hence the petitioner is constrained to file the present writ petition.

7. Learned counsel for the petitioner submits that once the resolution is passed by the Council, granting renewal of licence, as directed by this Court on 4.12.2001, cancelling the licence by virtue of resolution No.1591 dated 30.1.2002 is contrary to law and orders passed by this Court and also G.O.Ms.No.147, Municipal Administration and Water Supply Department dated 30.12.2000. Hence the resolution dated 30.1.2002 of the Council has to be quashed.

8. On the contrary, the second respondent filed a counter, stating that by resolution No.252 dated 29.7.2002, the council resolved to convert the clock room as ladies waiting room. To that effect, orders were passed on 8.8.2002 and communicated to the petitioner. The petitioner filed Contempt Petition No.493 of 2002 and the same was dismissed in favour of the respondent on 23.9.2002. Hence, he prays for dismissal of the writ petition.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. We heard the learned counsel appearing for both sides and perused the materials available on record.

10. Originally, licence was granted to the petitioner during the year 1998 to run the cloak room. Thereafter, as requested by the petitioner, the Council has agreed to convert the cloak room to that of a shop and allowed him to run his business and also agreed to renew the licence. Though the resolution was passed to renew the licence for a period of three years, it was not given effect to due to initiation of litigations by the petitioner.

11. Now the point for consideration, as contended by the learned counsel for the petitioner, is that, once the council has passed the resolution to renew the licence on 29.10.1999, whether the subsequent resolution passed by the Council to cancel the renewal of licence is legal?

12. To verify the same, we have gone through the proposition of law. Section 22 of the Tamil Nadu District Municipalities Act (V of 1920) (hereinafter referred to as "the Act") reads as follows"-

> "Obligation of the executive authority to carry out council's resolution:-
> The executive authority shall be bound to give effect to every resolution of the council unless such resolution is modified, suspended or cancelled by a controlling authority.

13. Section 36 of the Act reads as follows:-

> "Power to suspend or cancel resolutions etc.
>
> (1) The State Government may by order in writing :-
> (a) suspend or cancel any resolution passed, order issued, or licence or permission granted."

Therefore, as per Section 36 of the Act, the Government got power either to suspend or cancel any resolution passed by the Council. But, in this case, no such order has been passed by the Government. The Council has also not approached the Government either to suspend or cancel the resolution already passed. The petitioner, without waiting for the orders passed by the Government, approached this Court by way of filing writ petitions and writ appeals. The renewal of licence is pending from 2001 onwards.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. It is pertinent to point out that Schedule II of the Act is the list of Hill Stations and Schedule III is the rules regarding proceedings of the Council. Section 25 of the Act reads as follows:-

> " The council shall observe the rules in Schedule III and may make regulations not inconsistent there with or with other provisions of this Act or any rules made by the State Government in regard to the following matters:-
>
> (a) the time and place of its meetings.
>
> (b) the manner in which notice thereof shall be given.
>
> (c) the preservation of order and the conduct of proceedings at meetings and the powers which the Chairman may exercise for the purpose of enforcing his decisions on points or order.
>
> (d) the division of duties among the members of the council;
>
> (e) the constitution and procedure of committees;
>
> (f) the delegation of its power duties or functions
>
> (i) to the chairman, a councillor, an officer or servant of the council or a servant of the Government or
>
> (ii) to a committee constituted under clause (e) or to its chairman or to any one or more of its members;
>
> (g) the persons by whom receipts may be granted for money paid to the council and
>
> (h) all other similar matters."

15. Now we are concerned with Article 8 of the Schedule III of the Act, which reads as follows:-

> "8. No resolution of the council shall be modified or cancelled within three months after passing thereof except at a meeting specially convened in that behalf and by a resolution of the council supported by not less than one-half of the sanctioned number of members."

16. Therefore, the duration of cancelling any resolution passed by the Municipal Council is beyond three months. According to the learned counsel for the petitioner, the first resolution was passed to renew the licence on 30.1.2002 and the second resolution was passed on 29.7.2002, which is well after the expiry of three months. Hence the said resolution is valid under Rule 8 of the Act.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17. Regarding the relief sought for by the petitioner, it is to be mentioned that though the resolution was passed by the Council on 30.1.2002, no order was passed by the Executive Officer for implementation of the resolution passed by the Council. The petitioner waited for the order of the Executive Officer, in pursuance of the resolution passed by the council dated 30.1.2002. If he really wanted to renew the licence, he should have approached this Court and obtained an order to run the shop, but he has not done so.

18. The initiation of the municipal council to convert the cloak room into women waiting room is also for the public purpose. But without expressing any opinion on that issue, we are of the view that the writ petition is premature. The writ petition should not have been entertained because of the reason that the Authority has to function as per the provisions of the Act. If the petitioner is aggrieved by the resolution passed by the council, according to him, in the public interest as per the provisions of the Act, he should have approached the Controlling Authority. Section 36 of the Act gives power to suspend or cancel the resolutions etc. under the Act. The State Government may by order in writing suspend or cancel any resolution passed, order issued or licence or permission granted. Hence the writ petition is liable to be dismissed and the same is dismissed. Four months time is given to the petitioner to approach the Controlling Authority, if so advised. Till such time, the respondents are directed not to take coercive steps to close the business of the petitioner. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

1. The District Collector,
   Tuticorin District,
   Tuticorin.

2. The Superintendent of Police,
   Tuticorin District,
   Tuticorin.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The Commissioner,
Tuticorin Municipality,
Tuticorin.

4. The Chairman,
Municipal council,
Tuticorin Municipality,
Tuticorin.

1 cc To Mr.V.Raghupathi, Advocate, SR.36631.
1 cc To Mr.K.Rajkumar, Advocate, SR.35827.

W.P. No.32382 of 2002

MS(CO)
RVL 03.07.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/